

EXTRA INFO. 11/13/06 - (2)

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November 9, 2006

VIA FAX (978-264-9630) AND FIRST CLASS MAIL

Mr. Gary Rhodes, Building Commissioner
Town of Acton
Building Department
472 Main Street
Acton, MA 01720

Re: Site Plan Special Permit Application/Exchange Hall

Dear Mr. Rhodes:

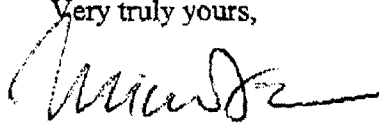
We are counsel to Davis Realty Trust (the "Trust"), the holder of a mortgage from Main Street Acton Corp. ("Main Street") for real property located at 127-131 Main Street, Acton, Massachusetts (the "Premises"), recorded at the Middlesex County (South) Registry of Deeds, on November 2, 1988 at Book 19446, Page 176 (the "Mortgage"). A copy of the Mortgage is attached for your convenient reference. Pursuant to the Mortgage's terms, Main Street covenanted to keep the Premises in good order, condition and repair, "and not to permit or suffer any waste." In other words, the Mortgage prohibits any alteration, removal or demolition of structures located on the Premises without the Trust's consent.

We have reviewed plans prepared by Waterman Design Associates, Inc. dated June 22, August 24 and August 30, 2006, submitted by Main Street and Bluebird Realty Trust in connection with a "Site Plan Special Permit Application for Exchange Hall." It appears therefrom that the developers propose to remove the east wing of 129-131 Main Street, and completely demolish 127 Main Street. As noted, the alteration or removal of any portion of the structures located at 127-131 Main Street would violate the Mortgage. Davis Realty Trust has neither been consulted, nor granted its consent for the alteration or removal of any structures subject to its Mortgage, and will vigorously oppose any attempt to compromise its rights and remedies under the Mortgage.

Mr. Gary Rhodes, Building Commissioner
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I would appreciate it if you would bring these matters to the attention of the Selectmen at your earliest convenience. I will appear at the next scheduled hearing on November 13 to discuss my client's position, and potential options available to the Town and the developers. Thank you very much for your attention to this matter.

Very truly yours,



Michael C. Fee

MCF/spl

Enclosures

cc: Davis Realty Trust
Lisa Bergemann, Esq.

fee:gr001.doc

Registry of Deeds

R I 9 4 4 6 2 1 7 6
REAL ESTATE MORTGAGE

MAIN STREET ACTON CORP., a Massachusetts corporation, of Acton, Massachusetts, herein the "Mortgagor," for consideration paid, grants to ROSE B. DAVIS, TRUSTEE OF THE DAVIS REALTY TRUST u/d/t dated July 24, 1962 recorded with Middlesex South Registry of Deeds at Book 10051, page 327 of High Street, Acton, Massachusetts, herein the "Mortgagee," with MORTGAGE COVENANTS to secure the full payment and performance of all obligations of Mortgagor to Mortgagee as provided in a promissory note of even date in the principal amount of Two Hundred Thirty-Four Thousand (\$234,000.00) Dollars, and to secure all covenants and agreements herein contained or referred to on the part of Mortgagor to be kept and performed, collectively referred to herein as "Obligations," that certain parcel of land with buildings and improvements thereon and all fixtures and appurtenances thereto, now or hereafter, located on 127-131 Main Street, Acton, Middlesex County, Massachusetts, which premises are more particularly described on Exhibit A attached hereto.

Said premises being subject to and with the benefit of restrictions, easements, appurtenances, rights, covenants, takings by any governmental authority, and to zoning laws of the Town of Acton, all of record, if any, and insofar as the same may be in force and applicable.

Registry of Deeds

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For Mortgagor's title see deed of the Mortgagee to the within named Mortgagor of even date, to be recorded in said Deeds herewith.

The Mortgagor covenants to pay when due all taxes, charges, assessments, water rates, and other charges which form the basis of a lien or expense upon or in connection with the Mortgaged Premises or any interest therein or upon any of the obligations secured hereby.

The Mortgagor covenants to keep the buildings and other improvements now or hereafter on the Mortgaged Premises insured against fire and such other casualty, casualties or contingencies as the Mortgagee may from time to time require all such policies to be payable in case of loss to the Mortgagee, as its interest may appear, and to be written in such form and for such periods and amounts as the Mortgagee shall from time to time approve or require, hereby granting the Mortgagee in the event of default authorization as attorney irrevocable of the Mortgagor to cancel such insurance and to retain the return premium thereof and to transfer such insurance to any person or persons claiming title to the Mortgaged Premises or any part thereof by virtue of foreclosure proceedings or otherwise.

The Mortgagor covenants to keep the Mortgaged Premises in

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Registry of Deeds

B 1 9 4 4 6 P 1 7 8

good order, condition and repair, and further covenants that the Mortgagor will not permit or suffer any strip or waste of the Mortgaged Premises.

The Mortgagor covenants that no occupant, including, without limitation, the Mortgagor, will use the Mortgaged premises or any portion thereof in violation of any law, and that whenever, in consequence of an alleged violation, the occupant's use of the Mortgaged Premises shall be prohibited or enjoined by any public official or court, the violation shall be deemed conclusively proved for the purposes of this Mortgage.

In the event that the property conveyed hereunder is sold or transferred, all sums owed by Mortgagor to the Mortgagee under the terms of the note of even date shall be due and payable.

In the event of redemption after foreclosure proceedings have been commenced, the Mortgagee shall be entitled to collect all costs, charges and expenses, including reasonable attorney's fees, incurred up to the time of redemption. In case of foreclosure sale, the Mortgagee shall be entitled to retain out of the monies arising from such sale all sums then secured by this Mortgage, whether then or thereafter payable, including all costs, charges, or expenses, including reasonable attorney's fees, incurred or sustained by the Mortgagee by reason of any default in the performance or

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Registry of Deeds

B 1 9 4 4 6 2 1 7 9

observance of any condition of this Mortgage.

The Mortgagor covenants that in case the Mortgagee, in the exercise of the power of sale herein given, elects to sell in parcels the premises then subject to this mortgage the Mortgagee may then sell all of the parcels subject to this mortgage, notwithstanding that the proceeds of all such sale may exceed the obligations then secured hereby.

This Mortgage is upon the statutory condition and upon the further conditions and covenants that Mortgagor perform and observe all of the terms, conditions and obligations of this Mortgage and the Note secured hereby, for any breach of which the Mortgagee or holder hereof shall have the statutory power of sale.

IN WITNESS WHEREOF, the said Main Street Acton Corp. has caused the within instrument to be signed and sealed this first day of November, 1988.

Main Street Acton Corp.

By: 

Glenn Berger,
Treasurer

Main Street Acton Corp.

By: 

Margaret Anstett,
President

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